

15 Oct.
88-9763

OGC Has Reviewed

1. We have examined with interest [redacted] Mission Directive 25X1A6a
No. 40-6 attached to Dispatch [redacted] of 31 August 1949. We 25X1A6c
also appreciate your request for our comments which are uniformly
laudatory as applied to both documents with one minor qualification:

a. If our understanding of the present attitude of the
Comptroller General is correct (see cases cited below),
a policy decision of the [redacted] Mission, *reflected in some regulation from* 25X1A6a
as to what con-
stitutes "unauthorized usage" would suffice to allow off-
set against an employee's termination payments. On this
basis the final paragraph of the Declaration of Trust may
be legally redundant. We agree with you, however, that it
provides assistance (perhaps psychological) in collection
of damages. We are not so certain however, that the para-
graph will assist recovery in the event of co-mingling after
death since this function appears to be covered by the pre-
ceding paragraph.

2. With regard to the second of your questions, which we have
interpreted to be directed to the legal authority of this Agency to
offset termination payments due an employee against damages *to its own property or that of another (including bodily injury)*
which the Agency had heretofore been required to pay as a result of the
employees unauthorized actions, we believe that the Agency has the
authority to take this action under certain conditions. May we refer
you to 25 Comp. Gen. 299³⁰¹ for a statement of the general rule. You
will also note that the rule applies only where the government is

under a legal liability to pay damages assessed (See 26 Comp. Gen. 866), and, in the absence of an agreement with the [REDACTED] Government, it may well be that the only recourse of an injured party in case of unauthorized use of a U. S. Government vehicle is against the employee concerned. In such cases it would be our opinion that the Agency could not offset termination payments due the employee against voluntary payments made by the government to settle a liability which it had no legal interest.

25X1A6a